

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BEFORE THE  
DEPARTMENT OF CORPORATIONS  
STATE OF CALIFORNIA

In the Matter of the Desist & Refrain Orders	)	
Issued Against:	)	DC file no. alpha
	)	
ROBERT M. CLARK, an individual, and	)	OAH No. L2003060888
CLARK ESTATE SERVICES, LLC, a	)	
California Limited Liability Company,	)	
	)	
Respondent	)	

**DECISION**

This matter was heard before the Honorable Eric Sawyer, Administrative Law Judge of the Office of Administrative Hearings, Los Angeles, California on November 10, 2003.

Daniel P. O'Donnell, Corporations Counsel, represented Complainant, the Department of Corporations. Jonathan Schwartz, Esq., represented Respondents, Robert M. Clark and Clark Estate Services, LLC.

Oral and documentary evidence was received and the matter argued. The record was closed and the matter submitted on November 10, 2003.

On January 5, 2004, the Administrative Law Judge submitted a Proposed Decision which was served on all parties by the Department of Corporations on February 6, 2004, in accordance with Government Code Section 11517(c)(1). The Proposed Decision was not adopted as the Decision in this matter. Pursuant to Section 11517(c)(2)(E) of the Government Code, all parties were served on April 16, 2004 with notice of the determination not to adopt the Proposed

1 Decision of the Administrative Law Judge and notified that the case would be decided by the  
2 California Corporations Commissioner upon the record, including the transcript of the  
3 proceedings held on November 10, 2003, and upon any written argument offered by the parties.  
4

5 Respondents submitted written argument in the form of a letter dated June 7, 2004.

6 Complainant submitted written argument in the form of a brief on June 14, 2004.  
7

8 The record in this case, including the transcript of the proceedings of November 10, 2003  
9 and the parties' written arguments, has been given careful consideration. The following shall  
10 constitute the Decision of the California Corporations Commissioner in the above-entitled  
11 matter.  
12

13 The below order AFFIRMS the Desist and Refrain Orders issued against Respondents.  
14

## 15 FACTUAL FINDINGS 16

### 17 *Parties & Jurisdiction* 18 19

20 1A. On December 24, 2002, Supervising Corporations Counsel Virginia Jo Dunlap,  
21 on behalf of Demetrios A. Boutris, California Corporations Commissioner ("Petitioner"), issued  
22 Desist and Refrain Orders ("D&R Order") against Respondents, pursuant to California  
23 Corporations Code section 25532. The D&R Order was thereafter properly served upon them.  
24

25 1B. The D&R Order alleges, amongst other things, that Respondents sold unqualified  
26 securities to investors in California, without being licensed by a broker-dealer in this state, by  
27 means including untrue and/or misleading written or oral communications about the securities.  
28

1 The D&R Order includes three separate orders prohibiting Respondents from future such  
2 conduct.

3  
4 2. Respondents timely submitted a written request for a hearing to challenge the  
5 D&R Order, which ensued.

6  
7 3A. Robert M. Clark ("Respondent Clark"), is a 57 year old man, who primarily does  
8 business in financial planning. He is married, with one adult daughter. He previously served in  
9 the military. He has a business degree and an MBA. He has a commission as a notary public in  
10 this state, is licensed as a life agent with the California Department of Insurance, and has a Series  
11 7 security registration from the NASD.

12  
13 3B. Clark Estate Services, LLC ("Respondent CES"), is a California Limited Liability  
14 Company, the business entity Respondent Clark formed to conduct his financial planning  
15 business, including the sale of securities described below.

16  
17 *Facts About TLC Securities*

18  
19 4. At all times relevant hereto, TLC Investment & Trade Co., TLC America, Inc.,  
20 dba Brea Development Company, TLC Brokerage, Inc., dba TLC Marketing, TLC Development,  
21 Inc., and/or TLC Real Properties RLLP-1 (hereinafter collectively referred to as "TLC"), issued  
22 investment instruments in the form of promissory notes, real estate investment agreements and/or  
23 investment contracts, all of which are securities under the California Corporate Securities Law of  
24 1968 ("CSL"), Corporations Code section 25000 et.seq. TLC offered and sold these securities  
25 through two distinct investment programs - *Tax Liens Certificates* (tax liens on real property  
26 located in Texas) and *Opportunity Properties* (various real property located throughout the  
27 United States).

1           5.       TLC represented that these securities had a one-year term, carried an interest rate  
2 of between 8 and 15 percent, and that the principal would be repaid at the maturity date. At the  
3 end of each one-year period, the investor was offered the chance to "rollover" the investment for  
4 another one-year period. Each offer by Respondents, described below, and/or TLC, to "rollover"  
5 the investment is a separate offer and each completed "rollover" a separate sale of securities in  
6 violation of the CSL.

7  
8           6.       These securities were offered and sold to California's investing public by a  
9 network of sales agents recruited by TLC. TLC raised more than \$156 million nationwide from  
10 more than 1,800 investors.

11  
12           7.       These securities were not qualified with the State of California nor were there any  
13 exemptions from qualification available under the CSL.

14  
15 *Facts About How Respondents Sold TLC Securities*

16  
17           8.       Beginning on a date established in early 1998, Respondents became an agent of  
18 TLC, in which capacity they offered and sold securities issued by TLC to California investors.

19  
20           9.       Respondents received sales commissions from TLC ranging from approximately  
21 4½ percent to 6 percent on each dollar invested. Further, each time investors reinvested their  
22 initial investments - and some investors "rolled-over" their investment more than once -  
23 Respondents received another commission.

24  
25           10.      Respondents were not licensed by the State of California, or any other similar  
26 licensing entity, to sell the securities at issue.

1 11A. The securities issued by TLC were offered and sold by means of untrue  
2 statements of material fact and omissions of material facts, in violation of the CSL.  
3

4 11B. Respondents offered and sold the securities by way of numerous sales brochures  
5 and materials produced by TLC that included untrue statements of material fact and omissions of  
6 material facts. Respondents also made oral representations to investors based on information  
7 provided to them by TLC.  
8

9 12. Respondents represented to prospective investors that the Tax Lien Certificates  
10 were a "safe, liquid, tax-deferred investment", in part because the investor was to hold title to  
11 property as tenants in common, and that the investor's principle was to be secured by real estate,  
12 while the interest was to be guaranteed by a promissory note. While this was the case for many  
13 of TLC's investors nationwide, it was not established that investors to whom Respondents sold  
14 these TLC securities were not placed on the deeds to the properties purchased by TLC and  
15 therefore not secured. In fact, the only TLC investor who testified, Robert P. Helms, received a  
16 warranty deed. However, there was also testimony by Brick Kane on behalf of the TLC court  
17 appointed receiver, Rob Evans and Associates, LLC (see 17A below), that there were several  
18 problems with the deeds because they were not issued to some investors or there were multiple  
19 deeds issued for the same property. With the approval of the district court, the Receiver  
20 considered the deeds to be void based on the commingling.  
21

22 13. Respondents also represented to investors, through TLC's sales brochures and oral  
23 representations, that the Tax Lien Certificates would pay the investors a fixed interest rate of  
24 between 8% and 15%. In fact, TLC never generated a profit, and between 1998 and 2000, when  
25 Respondents were making these representations to investors and potential investors, TLC had  
26 lost at least \$15 million. In order to make interest payments at these promised rates to investors,  
27 TLC used money from new investors, creating a classic Ponzi scheme. These facts would have  
28

1 been material to any investor's decision to invest in TLC. Respondents did not disclose these  
2 facts to the investors at this time because Respondents did not know those facts.  
3

4 14. Respondents also represented to prospective investors that the Opportunity  
5 Properties investments were a "Safe, Liquid, Fixed Rate Investment," in part by representing that  
6 the investor would be secured by a deed on the real property as tenants in common with TLC.  
7 While few, if any, investors were actually placed on the deeds to the properties purchased by  
8 TLC and were therefore not secured, it was not established that this was the case for investors to  
9 whom Respondent sold TLC securities. The only TLC investor who testified, Robert P. Helms,  
10 received a warranty deed. However, there was also testimony by Brick Kane on behalf of the  
11 TLC court appointed receiver, Rob Evans and Associates, LLC (see 17A below), that there were  
12 several problems with the deeds because they were not issued to some investors or there were  
13 multiple deeds issued for the same property. With the approval of the district court, the Receiver  
14 considered the deeds to be void based on the commingling.  
15

16 15. Respondents also represented to investors that the Opportunity Properties  
17 investments would provide "Guaranteed high returns." In fact, TLC never generated a profit, but  
18 rather lost at least \$15 million between 1998 and 2000. In order to make interest payments at  
19 these promised rates to investors, TLC used money from new investors, creating a classic Ponzi  
20 scheme. These facts would have been material to any investor's decision to invest in TLC.  
21 Respondents did not disclose those facts to the investors because Respondents did not know  
22 those facts.  
23  
24

25 16. Respondents did not inform potential investors that Respondents received a  
26 commission of up to 6 percent on every investment, as well as on every rollover of the  
27 investment, and that they also received "override" commissions on the sales of agents they  
28 recruited. Respondents also failed to inform investors that there were people above them who

1 also received commissions on the sale of these investments, including Edward F. "Frank" Cossey  
2 ("Cossey"), president of TLC, and that the total commissions paid by TLC exceeded \$20 million  
3 or approximately 13 percent of every dollar invested. While it was established that the most of  
4 these facts would have been material to any investor's decision to invest in TLC, it was not  
5 established that Respondents failure to inform investors of their commissions would have been  
6 material to those investors' decision to invest with TLC. The only TLC investor who testified,  
7 Robert P. Helms, had assumed Respondents received a commission on the sale of TLC securities  
8 to him.

9 17A. <sup>4</sup> On October 5, 2000, the United States Securities and Exchange Commission  
10 ("SEC") obtained a restraining order against TLC and Cossey, among others. The SEC alleged  
11 that TLC was operating an illegal Ponzi scheme. The United States District Court, Central  
12 District of California, also put TLC into receivership appointing Robb Evans as receiver. The  
13 receivership, at best, has, or will, result in recouping no more than 50% of TLC investors'  
14 investments. Since that time, Cossey, along with Gary Williams, Chief Financial Officer of  
15 TLC, have pled guilty in federal criminal actions instituted against them and are serving prison  
16 time, based on their activities at TLC.

17  
18 17B. The SEC alleged that TLC engaged in several kinds of securities fraud relating to  
19 their purported real estate business. The SEC's complaint alleged that TLC falsely represented  
20 that it was engaged in the real estate business when it in fact was using investor funds to (a) pay  
21 other investors; (b) invest over \$10 million in a fraudulent "prime bank" scheme; (3) buy <sup>5</sup>  
22 racehorses; (4) make charitable contributions in the amount of \$1.55 million to the high school  
23 football team that Cossey's son played for, including \$1 million for repairs to the stadium; and  
24 (5) be wired overseas.

25  
26 17C. These facts alleged by the SEC in their complaint came to light after Respondents  
27 sold TLC securities to prospective investors. Respondents did not know these facts at the time  
28

1 they sold TLC securities to investors. These facts would have been material to any investor's  
2 decision to invest in TLC.

3  
4 18. While unlawfully engaged, Respondents sold more than \$3,500,000 in unlawful  
5 securities to more than 50 separate victims in California, for which they received more than  
6 \$390,000 in sales commissions from TLC.

7  
8 19. The D&R Order issued to Respondents is necessary and appropriate in the public  
9 interest for the protection of investors and is consistent with the purposes fairly intended by the  
10 policy and provisions of the CSL.

11  
12 20. Respondents believed TLC was a legitimate investment enterprise. Respondent  
13 Clark attended a seminar given by TLC and was given materials about the business. Respondent  
14 Clark was given some information obtained by a colleague who conducted an independent  
15 investigation of the company and its principals, and found nothing alarming. Respondent Clark  
16 reviewed supporting magazine articles and book excerpts provided to him by TLC, and  
17 concluded the concept of making money from real estate and tax lien investments seemed  
18 logical.

19  
20 21. Respondent Clark did not believe the TLC items were securities because he was  
21 told so and TLC provided him written legal opinions from attorneys who so opined.

22  
23 22. Respondents believed the TLC business operated as a legitimate enterprise. TLC,  
24 and Respondents as its agent, were covered by a sizeable E&O insurance policy underwritten by  
25 a reputable insurance carrier. Respondent made frequent visits to TLC's headquarters and saw  
26 nothing suspicious about the operation. Respondents did not become aware of the Ponzi scheme  
27 until the end when all investments failed. Respondent Clark invested \$12,500 of his own money  
28



1 in TLC and also received regular "interest" payments until the SEC action (nor has he recovered  
2 most of his investment in or commissions owed by TLC).

3  
4 23. After TLC was seized, Respondents kept investors to whom they sold TLC  
5 products informed of the SEC and receivership proceedings. Respondents, along with other TLC  
6 sales agents, hired and helped pay for two law firms to litigate the receivership on behalf of their  
7 investors. Though many of Respondents' investors were undoubtedly upset about the situation, it  
8 was not established that any blamed Respondents. TLC investor Robert P. Helms testified  
9 Respondent Clark was sincere throughout the transaction, and otherwise he stated no objections  
10 against Respondents in this matter.

#### 11 12 LEGAL CONCLUSIONS

13  
14 1. Respondents offered or sold in the State of California, investment instruments in  
15 the form of promissory notes, real estate investment agreements and investment contracts issued  
16 by another entity, in violation of Corporations Code section 25110, in that the sale of such  
17 securities was subject to qualification under the law and such securities were offered for sale  
18 without first being so qualified. Factual Findings 1-19.

19  
20 2. Respondents effected transactions in, or induced or attempted to induce the  
21 purchase or sale of securities in this state, and therefore acted as a broker-dealer, subjecting them  
22 to licensing as a broker-dealer pursuant to Corporations Code section 25210, but Respondents  
23 were not so licensed as a broker-dealer in the State of California and therefore violated that law.  
24 Factual Findings 1-19.

25  
26 3. Respondents offered, sold, bought, or offered to buy, securities in the State of  
27 California, including but not limited to investment instruments in the form of promissory notes,  
28 real estate investment agreements and/or investment contracts issued by another entity, by means

1 of written and/or oral communication, which included an untrue statement of a material fact and  
2 omitted to state a material fact necessary in order to make the statements made, in light of the  
3 circumstances under which they were made, not misleading. The offer or sale of such securities  
4 therefore violated Corporations Code section 25401.

5  
6 Respondents are strictly liable for those statements irrespective of actual  
7 knowledge that what they were saying was untrue. *People v. Simon* (1995) 9 Cal.4<sup>th</sup> 493, 516.  
8 Thus, they are liable for making untrue and misleading statements about TLC to their investors.  
9 Factual Findings 1-23.

10  
11 4. Cause exists pursuant to Corporations Code section 25532 for the Corporations  
12 Commissioner to have issued orders of Respondents to desist and refrain from such conduct in  
13 the future. Regardless of the facts indicating Respondents were not knowing participants in the  
14 TLC scheme, and took efforts thereafter to help victimized investors, there is nothing in  
15 Corporations Code section 25532 that prevents issuance of such an order in light of the  
16 underlying violations of the law Respondents acknowledge they committed. Factual Findings 1-  
17 23.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ORDER

The Desist and Refrain Orders dated December 24, 2002, against Respondents  
ROBERT M. CLARK and CLARK ESTATE SERVICES, LLC, by the California Corporations  
Commissioner, are AFFIRMED.

This Decision shall become effective on AUG 25 2004.

IT IS SO ORDERED.

Dated: AUG 25 2004

---

WILLIAM P. WOOD  
California Corporations Commissioner